

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

WESTCHESTER FIRE INSURANCE)	Case No. 7:11-cv-00672-HMH
COMPANY,)	
)	
Plaintiff,)	MOTION FOR PARTIAL SUMMARY
)	JUDGMENT
v.)	
)	
SAMUEL F. EAKIN,)	
)	
Defendant.)	
)	

The Plaintiff, Westchester Fire Insurance Company (“Westchester”), submits this Motion for Partial Summary Judgment on the issue of liability and by incorporation its memorandum of law in support. This motion is filed in accordance with FRCP 56(a) and the Local Rules for the United States District Court, District of South Carolina.

The grounds for the motion are as follows:

1. There is no genuine issue of fact and the Plaintiff is entitled to judgment as a matter of law.
2. This Motion is based upon the issuance by Westchester of a surety performance bond ("Bond") on behalf of Sanders Bros., Inc.
3. As further shown in the Declaration of Bob Boote, attached hereto as **Exhibit "1,"** a judgment was entered against Sanders Bros., Inc. on the Bond in excess of \$1,000,000.00.
4. Defendant Eakin executed an Indemnity Agreement in connection with the issuance of the Bond. Defendant Eakin has admitted this fact in the attached Responses to Request to Admit, attached hereto as **Exhibit "2."**

5. Proper demand was made upon Eakin, as shown in **Exhibit "1,"** and Eakin has failed and refused to make payment under the Indemnity Agreement, as admitted in **Exhibit "2."**

6. This Motion is supported by the Declaration of Mr. Boote (**Exhibit "1,"** the Responses to Requests to Admit (**Exhibit "2,"**), and is further supported by the attached Memorandum of Law.

Dated this 7th day of May, 2012.

s/Kimila L. Wooten

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